

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Antwane Cottman,

Case No. 21-cv-2393 (SRN/TNL)

Petitioner,

v.

REPORT AND RECOMMENDATION

Warden J. Fikes,

Respondent.

This matter comes before the Court on Petitioner Antwane Cottman's petition for a writ of habeas corpus [ECF No. 1].

IT IS HEREBY RECOMMENDED THAT, to the extent that Cottman's petition includes a request for a preliminary injunction, that request be **DENIED WITHOUT PREJUDICE**. When considering a preliminary-injunction request, Eighth Circuit district courts consider the "*Dataphase* factors": "(1) the threat of irreparable harm to the movant; (2) the state of balance between this harm and the injury that granting the injunction will inflict on other parties litigant; (3) the probability that movant will succeed on the merits; and (4) the public interest.'" *Novus Franchising, Inc. v. Dawson*, 725 F.3d 885, 893 (8th Cir. 2013) (quoting *Dataphase Sys., Inc. v. CL Sys., Inc.*, 640 F.2d 109, 114 (8th Cir. 1981), and applying factors to preliminary-injunction request). Critically, the party seeking a preliminary injunction has the burden of showing such relief's propriety. *See, e.g., Lankford v. Sherman*, 451 F.3d 496, 503 (8th Cir. 2006) (citing *Watkins, Inc. v. Lewis*, 346 F.3d 841, 844 (8th Cir. 2003)). Cottman's brief discussion of preliminary-injunction relief contains

no direct discussion of the *Dataphase* factors, *see* ECF No. 1 at 1, so he has not met his burden of showing that a preliminary injunction is appropriate here.

Dated: December 6, 2021

s/ Tony N. Leung
Tony N. Leung
United States Magistrate Judge
District of Minnesota

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NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. *See* Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).